RECENT CASES

BAILMENT—CONTRACT—LIABILITY OF BAILEE—NIAGARA ALKALI CO. v. CHAMPION COATED PAPER CO., 146 N. Y. S. 284.—Plaintiff entered into a contract to sell defendant two years' supply of muratic acid, and agreed to ship to him 500 empty carboys to remain in defendant's possession during the life of the contract without charge, to be used for the storage of the acid; the carboys to be returned at the end of the contract and all not so returned to be paid for. The carboys, while stored in a safe place by defendant, were carried away by an unprecedented flood. *Held,* the defendant was merely bailee of the carboys, and was not liable for their loss occurring through an act of God.

Where a private carrier for hire contracted that he "would move them (the goods) with care and deliver them safely", *held,* this was not a warranty against every loss and did not enlarge his obligation beyond that of mere bailee so as to make him liable for loss other than that caused by his failure to use care and skill. *Jaminet v. American Storage Co.,* 109 Mo. App, 257. Where patterns had been delivered to bailee to make castings with an agreement to be responsible for the patterns and to safely return them, and they were destroyed by fire without the fault of the bailee, *held,* bailee is not liable in the absence of a special agreement to insure. *Caldwell-Wilcox Co. v. Sullivan,* 3 N. Y. App. Div. 359; *Young v. Leary,* 135 N. Y. 569. Plaintiff leased fire extinguishers to defendant under an agreement that if any damage were done the lessee would pay the "value of the property so damaged or destroyed" to lessor. *Held,* the lessee was liable where they were destroyed by fire though the fire did not result from his negligence. Greenbaum, J., *dissenting. Rapid Fire Extinguisher Co. v. Hay-Budden Mfg. Co.,* 75 N. Y. S., 1008. Where a bailee for hire said "I will take the horse and return him in as good or better condition than I took him and if I don't I will agree to pay for him", *held,* bailee was liable for the value of the horse which died on his hands, though without the fault of the bailee. *Grady v. Schwermler,* 113 N. W. (N. D.) 1031. In contracts of bailment providing for the return of the article bailed at the end of the period of bailment, there is a conflict of authority whether the bailee becomes an insurer of the thing bailed. All authorities agree that the bailee may make such a contract of insurance. In the absence of a clear, express agreement to insure, the better view is that there is an implied condition precedent that the article bailed will be in existence at the end of the bailment period, and if it lost without the fault or negligence of the bailee, he is not liable.

DIVORCE—PROHIBITION AGAINST REMARRIAGE—WHAT LAW GOVERNS.—PEOPLE v. PROUTY, 104 N. E. (ILL.) 387.—*Held,* the divorce act effective July 1, 1905, prohibiting the remarriage of parties divorced for certain causes, and providing that a marriage in violation of the act shall be held absolutely void, governs as to the rights of the parties within this state even though the subsequent marriage be performed within another jurisdiction.

It is a general rule of law that a contract entered into in another state, if valid, according to the law of that place, is valid everywhere. *Potter v. Brown,* 5 East 130; Story's *Conflict of Laws,* par. 242. A second marriage, solemnized in another state of a divorced person before the expiration of the period provided for such second marriage in Sec. 61 of the Civil Code, which is valid by the laws of that state is valid in this state. Temple, Vandyke, Harrison, JJ., *dissenting. Wood v. Wood,* 137 Cal. 129; *State v. Richardson,* 72 Vt. 49; *Comm. v. Lane,* 113 Mass. 458; *Van Voorhis v. Brintnall,* 86 N. Y. 18. Where a mulatto and a white woman residents of Massachustts were married in Rhode Island and then returned to the former state, the marriage was held valid though prohibited by statute, because the marriage was valid in Rhode Island. *Medway v. Nedham,* 16 Mass. 157. The contrary was held in a similar case, *Pennegar & Henry v. State,* 87 Tenn. 244. Accord, *McLennan v. McLennan,* 31 Ore. 480. Where the parties went to another state and were married in order to evade the law of their own state, and the statute provided that the intent to evade the law would invalidate the marriage, the court held the marriage void. *Tyler v. Tyler,* 170 Mass. 150. The great weight of authority is contrary to the holding of the principal case, the underlying reason being a question of policy in both lines of authority. The majority view takes the position that property rights will be safer and the rights of children will be better subserved by giving effect to the marriage than by annulling the marriage and thereby giving effect to the statute.

JUSTICES OF THE PEACE—JURISDICTION—RESIDENCE OF PARTIES—WAIVER OF OBJECTION.—ROGERS V. TOWNES, 81 S. E. (S. C.) 278.—*Held,* that where a defendant in an action in a magistrate's court did not reside within the territorial jurisdiction of the court, and did not appear, though duly notified, he waived the want of jurisdiction over him, and a default judgment was valid.

As a general rule any exercise of jurisdiction by a justice of the peace beyond his prescribed territory is *coram non judice* and void. *People v. Campbell,* 22 Hun 574. But the rule that jurisdiction of the person may be conferred by waiver applies to justice courts. *Grimm v. Dundee Land Co.,* 55 Mo. App. 457. Such waiver of one defendant will not give jurisdiction over other joint defendants. *Davis v. Osborne,* 156 Ind. 86; *Stoddard v. Holmes,* 1 Cow. (N. Y.) 245. When a judgment of a justice court is void for want of jurisdiction of the person, the non-appearance of the defendant is no waiver. *Lowe v. Alexander,* 15 Cal. 296; *Tiffany v. Gilbert,* 4 Barb. (N. Y.) 320. But there are some courts that hold that the defendant, after process, must appear and claim his privilege. *State v. Carter,* 6 Ind. 37; *Laroque v. Harvey,* 57 Hun (N. Y.) 366. The rule seems to be in Connecticut that where a justice is disqualified from trying a case from any cause, a waiver, to be effective, must be in writing. *Keeler v. Stead,* 56 Conn. 501.

The majority rule and that which seems to be the more just and reasonable is that absence of a defendant out of the jurisdiction is no waiver of his privilege. There are two reasons for this. First that the summons and judgment would be invalid as having extra-territorial effect,